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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number: 09/954,526

Applicant: James F. PITZEN, et al.

Filed: March 5, 2001

Title: A Combination
Rechargeable, Detachable
Battery System and Power
Tool

Art Unit: 1745

Examiner: John S. Maples

Attorney Docket No.: 54525.000055

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**PETITION UNDER
37 C.F.R. § 1.183 TO ACCEPT
SUPPLEMENTAL
DECLARATION WITHOUT
INVENTORS' SIGNATURES**

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Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir,

Linvatec Corporation, assignee of the above-captioned Reissue Application, hereby petitions the Commissioner, pursuant to 37 C.F.R. § 1.183 and in accordance with MPEP §1414.01, to suspend the rules and accept a Supplemental Declaration for Reissue Patent Application without the inventors' signatures.

Relevant Law

In accordance with 37 C.F.R. § 1.172, the declaration in any reissue application seeking to broaden the claims must be signed by all the named inventors. If an inventor refuses to sign the reissue declaration then a petition may be granted allowing the assignee of the patent and reissue application to make application for patent on behalf of the inventors. 37 C.F.R. § 1.47(b).

If further corrections are made to the claims during the prosecution of the reissue application, a supplemental declaration is required. 37 C.F.R. § 1.175(b)(1). This supplemental declaration must be signed by all the named inventors. *See* 37 C.F.R. §§ 1.172 and 1.175(b)(1); *see also* MPEP 1414.01. If an inventor refuses to sign a supplemental reissue declaration, a petition may be granted, under 37 C.F.R. § 1.183, to suspend the rules and waive the signature requirement for the non-signing inventor. *See* MPEP 1414.01.

Relevant History of Current Reissue Application

Petitioner, Linvatec Corporation, is the assignee of the entire right, title and interest in the subject reissue application and its parent patent, U.S. Patent 5,792,573, by virtue of an assignment of the inventors' entire right, title and interest therein to Minnesota Mining and Manufacturing Co. ("3M") recorded at Reel 7042, Frame 559-561 and an assignment of 3M's entire right, title and interest therein to Linvatec Corporation recorded at Reel 11648, Frame 232. *See* Exhibits 1 and 2 accompanying Declaration of Patrick A. Doody, filed in application 09/954,526 on January 4, 2002.

On January 4, 2002, Petitioner filed a petition for status under 37 C.F.R. § 1.47(b) because the inventors refused to sign the reissue declaration. Status under 37 C.F.R. § 1.47(b) was granted on April 16, 2002, thus allowing petitioner to file the reissue declaration without the inventors' signatures. All documentation relating to this petition can be found in the file wrapper of the above-captioned reissue application.

During the course of prosecution, amendments have been made to the claims. In accordance with 37 C.F.R. § 1.175(b)(1) and MPEP 1414.01, applicants are required to file a supplemental oath or declaration. In view of the previously granted petition under 37 C.F.R. § 1.47(b), Petitioner now petitions the Commissioner to accept the Supplemental Declaration for Reissue Patent Application without the inventors' signatures.

Documentation

Attached please find the following documentation:

Exhibit 1: A copy of the grant of the petition under 37 C.F.R. § 1.47(b).

Exhibit 2: An unsigned Supplemental Declaration For Reissue Patent Application.

A listing of the inventors names and addresses as verified at the time of the petition under 37 C.F.R. § 1.47(b) is set forth below:

James F. Pitzen,
436 Oday Street South,
Maplewood, Minnesota 55119-5540;

Jeffrey D. Smith,
19340 North Newgate Avenue,
Marine on Saint Croix, Minnesota 55047; and

Charles E. Alexson,
12651 W Twin Lake Road,
Hayward, Wisconsin 54843-5314.

Summary

The Commissioner clearly recognizes that there will be instances in which a supplemental reissue declaration is necessary, but one or more inventors refuse to sign. *See* MPEP § 1414.01. Accordingly, the Commissioner provides a procedure for waiving the signature requirement, namely, a petition under 37 C.F.R. § 1.183. *See id.* Petitioner respectfully submits that it has complied with the procedure established by the Commissioner

and, therefore, respectfully requests that Commissioner suspend the rules and accept a Supplemental Declaration for Reissue Patent Application without the inventors' signatures.

The Commissioner is authorized to debit a fee of \$130.00, as required by 37 C.F.R. §§ 1.183 and 1.17(h), from the undersigned's Deposit Account No. 50-0206. No other fee is believed to be due in conjunction with this petition. However, the Commissioner is authorized to debit any additional fee due in relation hereto from the undersigned's Deposit Account No. 50-0206.

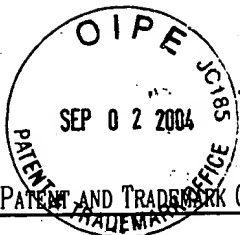
Respectfully submitted,

HUNTON & WILLIAMS

Dated: 9/2/2004

By: Christopher C. Campbell
Christopher C. Campbell
Registration No. 37,291

Hunton & Williams
Intellectual Property Department
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
(202) 955-1500 (Telephone)
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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

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APR 23 2002

Paper No. 4

Hunton & Williams
Attn Patrick A Doody
1900 K Street NW
Washington, DC 20006

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In re Application of
Pitzen et al.
Application No. 09/954,526
Filed: March 5, 2001
Attorney Docket Number: 54525.000055

DECISION ACCORDING STATUS
UNDER 37 C.F.R. §1.47(b)

This is in response to the petition for status under 37 C.F.R. §1.47(b), filed January 4, 2002.

The petition is **GRANTED**.

The above-identified application was filed on March 5, 2001, without an executed oath or declaration. Accordingly, on November 5, 2001, a Notice to File Missing Parts of Application - Filing Date Granted was mailed, requiring applicant to submit an executed oath or declaration, and pay a surcharge for late filing.

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In response, on January 4, 2002 applicant filed:

- a declaration of Patrick A. Doody, attorney of applicant,
- assignment documents between 3M and Linvatec,
- documents to establish ownership of invention,
- correspondence with non-signing inventors,
- declaration and power of attorney signed by Patrick Doody on behalf of Linvatec Corporation, (assignee),
- the surcharge under 1.16(e) for late filing, and
- a petition (and fee) under §1.47(b).

Applicant has satisfied the requirements of §1.47(b)¹. Applicant, by declaration of persons with first hand knowledge and documentary evidence, demonstrated that the non-signing inventors have been presented with a copy of the application papers for signature and that they have refused by their conduct to sign the declaration. Applicant submitted a declaration signed by Patrick A. Doody, attorney for assignee Linvatec Corporation. This declaration has been reviewed and is found in compliance with 1.63, 1.64 and 1.175. Applicant paid the petition fee and included a statement of the non-signing inventors' last known address in the petition. The assignment agreement and documents which establish the chain of ownership establish the applicant's proprietary interest in the application. Applicant has also made a showing of irreparable harm.

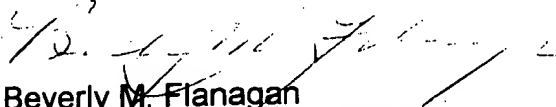
This application is hereby accorded Rule 1.47(b) status.

¹ A grantable petition under 37 C.F.R. §1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing of irreparable damage or the need to preserve the rights of the parties.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 1700 for further processing of the application.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

**SUPPLEMENTAL DECLARATION
FOR REISSUE
PATENT APPLICATION
TO CORRECT "ERRORS" STATEMENT
(37 CFR 1.175)**

SEP 02 2004

TRADEMARK OFFICE

Attorney Docket Number	54525.000055
First Named Inventor	James F. Pitzen
COMPLETE	
Application Number	09/954,526
Filing Date	March 5, 2001
Art Unit	1745
Examiner Name	John S. Maples

I/We hereby declare that:

Every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration(s) submitted in this application, arose without any deceptive intention on the part of the applicant.

I/We hereby declare that all statements made herein of my/our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor: ☒ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

James F.

Family Name or Surname

Pitzen

Inventor's
Signature

Date

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Name of Second Inventor: ☒ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Jeffrey D.

Family Name or Surname

Smith

Inventor's
Signature

Date

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Name of Third Inventor: ☒ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Charles E.

Family Name or Surname

Alexson

Inventor's
Signature

Date

Name of Fourth Inventor: ☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

☐ Additional inventors or legal representatives(s) are being named on the _____ supplemental sheets PTO/SB/02A or 02LR attached hereto.

This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number: 09/954,526

Applicant: James F. PITZEN, et al.

Filed: March 5, 2001

Title: A Combination Rechargeable,
Detachable Battery System and
Power Tool

Art Unit: 1745

Examiner: John S. Maples

Attorney Docket No.: 54525.000055

**SUPPLEMENTAL
REPLY TO FINAL
OFFICE ACTION**

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir,

A final action was mailed in the above-referenced utility patent reissue application on June 17, 2004. On August 25, 2004, Applicants filed an amendment under 37 C.F.R. § 1.116. Applicants believe that all pending claims are now allowable.

In accordance with 37 C.F.R. § 1.178, the original patent, No. 5,792,573, is herewith submitted.

Additionally, Applicants submit, herewith, a petition pursuant to 37 C.F.R. § 1.183 and in accordance with MPEP § 1414.01, to suspend the rules and accept a Supplemental Declaration for Reissue Patent Application without the inventors' signatures. Accordingly, Applicants have complied with the requirements of 37 C.F.R. § 1.175(b)(1).

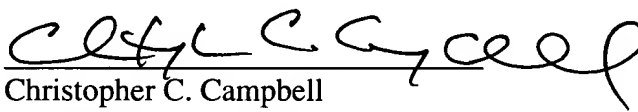
Applicants believe that all requirements have now been met and that the above captioned reissue application is in condition for allowance. Applicants respectfully solicit timely allowance of this application.

No fee is believed to be due in conjunction with this reply. However, the Commissioner is authorized to debit any fee due in relation hereto from the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS

Dated: 9/2/2004

By: 
Christopher C. Campbell
Registration No. 37,291

Hunton & Williams
Intellectual Property Department
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
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Art Unit: 1745

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Attorney Docket No.: 54525.000055

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:


Patentee is transmitting herewith the following documents:

- [X] Supplemental Reply to Final Office Action;
- [X] Petition Under 37 C.F.R. § 1.183 To Accept Supplemental Declaration Without Inventors' Signature;
- [X] Original Letters Patent for U.S. Patent No. 5,792,573;
- [X] The Commissioner is hereby authorized to charge a total of **\$130.00** to Deposit Account No. 50-0206.
- [X] The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-0206.

[X] Green card to be date-stamped and returned.

Respectfully submitted,
HUNTON & WILLIAMS

Dated: 9/2/2004

By: 
Christopher C. Campbell
Registration No. 37,291

Hunton & Williams LLP
Intellectual Property Department
1900 K Street, N.W., Suite 1200
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